

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LEVEL SLEEP LLC,

Plaintiff

v.

DORMEO NORTH AMERICA, LLC; TOP
SHOP T.V. LLC (dba DORMEO
OCTASPRING, LLC); OCTASPRING
OPERATIONS US, INC.; and OCTASPRING
US, INC.,

Defendants.

Case No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Level Sleep LLC (“Plaintiff” or “Level Sleep”), by and through its undersigned attorneys, hereby alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters.

NATURE OF THE CASE

1. This is an action for patent infringement under 35 U.S.C. § 271, et seq. by Level Sleep against defendants Dormeo North America, LLC, Top Shop T.V. LLC (dba Dormeo Octaspring, LLC), Octaspring Operations US, Inc., and Octaspring US, Inc. (collectively, “Dormeo”) for infringement of U.S. Patent No. 6,807,698 (the “698 Patent”) and U.S. Patent No. 7,036,172 (the “172 Patent”) (collectively, the “Level Sleep Patents”).

2. Dormeo infringes the Level Sleep Patents by, among other things, making, using, offering for sale, or selling within the United States, and/or importing into the United States, beds with sleep surfaces having multiple zones in the longitudinal direction providing low body

pressure and spinal alignment. Dormeo also infringes the Level Sleep Patents indirectly through the direct-infringement activities of third parties including its distributors, resellers, and/or customers.

3. Level Sleep seeks damages and injunctive relief for Dormeo's patent infringement.

PARTIES

4. Plaintiff Level Sleep is a limited liability company with its principal place of business in Sonoma, California. Level Sleep is in the business of designing, developing, and selling mattresses, pillows, and related products that enhance sleep, lower pain and stiffness, and reduce tossing and turning at night.

5. On information and belief, defendant Dormeo North America, LLC is a limited liability company registered to do business in the State of Texas with a principal place of business located in Plano, Texas.

6. On information and belief, defendant Top Shop T.V. LLC is registered to do business in the State of Texas under the fictitious business name Dormeo Octaspring, LLC and is a subsidiary of defendant Dormeo North America, LLC.

7. On information and belief, defendant Octaspring Operations US, Inc. is registered to do business in the State of Texas and is a subsidiary of defendant Top Shop T.V. LLC (dba Dormeo Octaspring, LLC).

8. On information and belief, defendant Octaspring US, Inc. is registered to do business in the State of Texas and is a subsidiary of defendant Top Shop T.V. LLC (dba Dormeo Octaspring, LLC).

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because this is a complaint for patent infringement.

10. The Court also has personal jurisdiction over the defendants. On information and belief, Dormeo conducts business and has committed acts of infringement in this district and elsewhere in the United States by making, using, offering for sale, selling, and/or importing Dormeo multi-zone mattresses providing low body pressure and spinal alignment. Further, the exercise of personal jurisdiction over Dormeo in this case would comport with principles of fair play and substantial justice.

11. Venue is proper in this District because, on information and belief, the defendants have a regular and established place of business in this District including a principal place of business located in Plano (1901 10th Street, Suite 500, Plano, Texas, 75074).

BACKGROUND

12. Level Sleep was founded with the goal of providing its customers with better sleep. One of the co-founders, Roger Sramek, is an inventor named on eight United States patents, and additional pending patent applications, covering pillows and mattresses designed specifically to improve sleep. The company sells its patented and proprietary mattresses, pillows, and other sleep-enhancing products from its original location and “Experience Center” in Sonoma, California, and through the company’s website (www.levelsleep.com).

13. Level Sleep is the owner by assignment of United States patent applications and granted patents on innovations in mattress and related sleep technology that serve to achieve these benefits, including the Level Sleep Patents. Level Sleep’s practice has been to mark its commercial products with relevant patent numbers, including the Level Sleep Patents.

14. Dormeo manufactures and sells mattresses, beds, and pillows. Among other products, Dormeo sells a line of mattresses called the Dormeo Octaspring that infringe the Level Sleep Patents, as discussed further below. On information and belief, Dormeo manufactures the infringing mattresses in the United States, including in this District, and sells them from retail stores located in Texas and Oklahoma.

FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 6,807,698)

15. Level Sleep incorporates the preceding paragraphs as though fully stated here.

16. Level Sleep is the owner of all rights, title, and interest in the '698 Patent, which is entitled "Bed Having Low Body Pressure and Alignment" and issued on October 26, 2004. A true and correct copy of the '698 Patent is attached as Exhibit A.

17. The '698 Patent is directed to a mattress with multiple layers and zones to support the reclining body in alignment and with lower pressure. For example, claim 1 reads as follows:

1. A mattress extending in a longitudinal direction, from a mattress head to a mattress foot, and extending in a lateral direction, normal to the longitudinal direction, for supporting a first reclining body, said body including a head part, a shoulder part, a waist part, a hip part and a leg part for reclining in the longitudinal direction with the head part toward the mattress head and the leg part toward the mattress foot, said mattress comprising,

a resilient top member having a top region possessing uniform displacement parameters for providing a uniform supporting surface pressure to the reclining body,

resilient supporting means below said top member, said resilient supporting means extending in said lateral direction and in said longitudinal direction with differing displacement parameters along the longitudinal direction for imparting differing vertical compressions along the longitudinal direction in the presence of said reclining body, said resilient supporting means for coacting with said top member for establishing alignment of the shoulder, waist and hip parts and for establishing low supporting surface pressure on the body,

a cover for covering said resilient top member and said resilient supporting means without interfering with the displacement parameters and the vertical compressions when supporting said reclining body.

18. On information and belief, Dormeo infringes at least claim 1 of the '698 Patent by making, using, offering for sale, and selling in the United States and/or importing into the United States infringing products including at least its Octaspring mattresses.

19. Dormeo markets its Octaspring mattresses claiming: "In each DORMEO Mattress, hundreds of Octasprings are assembled into seven zones of comfort -- softer for your head, more supportive for your hips and thighs. No pressure points, just equally distributed weight, adapting to each sleeper's body weight with customer support."



The screenshot shows the Dormeo website's technology page. At the top is a dark navigation bar with links for 'SUBSCRIBE', 'CONTACT US', and 'CALL US 800-896-2802'. Below this is a light-colored header with the Dormeo logo and navigation links: 'HOME', 'MATTRESS', 'PILLOWS', 'TECHNOLOGY' (highlighted), and 'STORE LOCATOR'. The main content area has a light gray background. On the left, there is a section titled 'But what, exactly, is an Octaspring? Call it a honeycomb of comfort.' followed by two paragraphs of text describing the technology. On the right, there is a video player with a play button and the hashtag '#SleepReinvented - Cools, Comforts, Cradles'. The video shows a woman sitting on a mattress. At the bottom of the page is a dark footer with links for 'TECHNOLOGY' and 'WARRANTY INFO', and a row of social media icons (Facebook, Twitter, Pinterest, YouTube, LinkedIn, Instagram).

But what, exactly, is an Octaspring?
Call it a honeycomb of comfort.

Simply put, DORMEO® Mattress is the most advanced mattress on the market. Thanks to revolutionary Octaspring sleep technology, tossing and turning is a thing of the past.

A cross between a spring coil and memory foam, Octasprings are the power behind DORMEO® Mattresses legendary comfort. Pressure-relieving and open to air flow, each Octaspring features eight reinforcements, a series of air vents and a hole in the center that lets humid air pass through. This design allows air to filter through and away from the mattress, dissipating heat and humidity. This creates a luxurious, dynamic sleep surface that's noticeably cooler.

In each DORMEO® Mattress, hundreds of Octasprings are assembled into seven zones of comfort -- softer for your head, more supportive for your hips and thighs. No pressure points, just equally distributed weight, adapting to each sleeper's body weight with custom support. The final product is flexible, breathable and cool. 8X more breathable than a memory foam mattress, in fact. Octasprings are like nothing you've ever felt before -- game-changing sleep technology that will revolutionize the way you rest.

TECHNOLOGY WARRANTY INFO

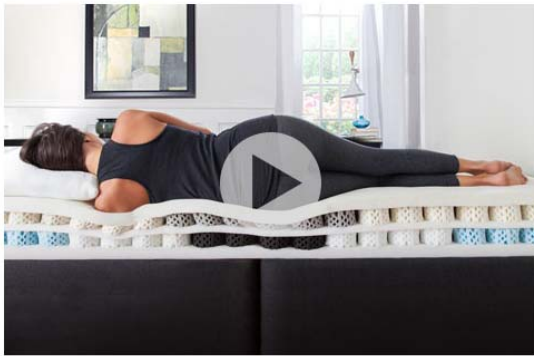
(www.dormeo.com/technology.html).

20. The following image from the Dormeo website shows the various layers and zones of the Dormeo mattress.



Among other things, this picture shows a resilient top member (directly above the upper layer of Octasprings) with a top region possessing uniform displacement parameters for providing a uniform supporting surface pressure to a reclining body, as recited in claim 1. This image also shows that the bed includes resilient supporting means below the top member, also as recited in the claim.

21. The Dormeo mattresses have differing displacement parameters along the longitudinal direction for imparting differing vertical compressions so that the resilient supporting means coacts with the top member to provide alignment of the shoulder, waist, and hip parts and for establishing low supporting surface pressure on the body, as recited in claim 1. As Dormeo itself admits, its mattresses include “Octasprings positioned into zones, offering more support for your hips and thighs, softer for your head and shoulders, keeping your spine in complete alignment.”



BENEFITS

- Experience pressure relieving comfort **without the heat of memory foam** or the push-back of traditional springs.
- Octasprings positioned into zones, **offering more support** for your hips and thighs, softer for your head and shoulders, keeping your spine in complete alignment.
- Eliminates partner's disturbance.
- Breathable cover designed to **resist dust-mites and bacteria**.
- Mesh sides allow for **maximum air flow**.
- No flipping or turning necessary.

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(www.dormeo.com/mattress.html). Dormeo further claims to provide “a high level of pressure relieving comfort.”

22. In addition, Dormeo mattresses include a cover for covering the resilient top member and said resilient supporting means without interfering with the displacement parameters and the vertical compressions of the bed, as recited in claim 1. For example, Dormeo states on its website that its mattresses include a “Plush cover with Tencel® [that] is softer than silk, cooler than linen, more absorbent than cotton and eco-friendly.”



Dormeo® 340GXZ

- 15 inch pillow top profile offering a high level of pressure-relieving comfort with a Luxury Plush supportive feel.
- Added pillow-top with sensual, contouring comfort
- Top cooling Layer of PCM™ (Phase Change Material)
- Ultra-deep HydraCOOL™ Gel Memory Foam Comfort Layer
- Ultra-deep Supreme AirCOOL™ Gel Foam Comfort Layer
- 3 patented layers of revolutionary Octaspring® Technology
- Durable Ecocell™ Support Core
- Plush cover with Tencel® is softer than silk, cooler than linen, more absorbent than cotton and eco-friendly. Our 360°wave air-mesh sides allow our revolutionary Octaspring Technology to breathe. Cover is resistant to dust-mites and bacteria.
- Mattress requires no flipping or turning
- 15 Year Limited Warranty

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(www.dormeo.com/mattress.html).

23. Through its actions, as described above, Dormeo has directly infringed and continues to infringe at least claim 1 of the '698 Patent, either literally or through the doctrine of equivalents, under 35 U.S.C. § 271(a).

24. In addition, Dormeo is indirectly responsible for the past and continuing direct infringement of at least claim 1 of the '698 Patent by certain third parties, including its customers and others, who have purchased and assembled Dormeo mattresses. When Dormeo's infringing mattresses are made, used, offered for sale, or sold by its customers and others, such action constitutes direct infringement of at least claim 1 of the '698 Patent. Furthermore, Dormeo has had knowledge of the '698 Patent since, at latest, the date this complaint was filed. Thus, Dormeo knows and has known (or has been willfully blind to the fact) that its customers and other third parties directly infringe claims of the '698 Patent through their making, using, offering for sale, or selling within the United States the infringing Dormeo mattresses.

25. On information and belief, Dormeo has specifically intended to induce, and has induced, its customers and others to directly infringe at least claim 1 of the '698 Patent through its instructions to its customers and others in the use and assembly of its beds. On information and belief, Dormeo provides instructional and other explanatory materials to its customers and others that describe the proper assembly and use of its beds. Further, on information and belief, Dormeo actively encouraged and continues to actively encourage its customers and others to directly infringe the '698 Patent by making, using, testing, offering for sale, and selling the infringing Dormeo mattresses. Thus, Dormeo has induced, and continues to induce, infringement of at least claim 1 of the '698 Patent under 35 U.S.C. § 271(b).

26. Additionally, Dormeo has contributorily infringed and continues to contributorily infringe under 35 U.S.C. § 271(c) at least claim 1 of the '698 Patent. As explained above,

certain third parties including Dormeo's customers have been infringing and continue to directly infringe at least claim 1 of the '698 Patent. Dormeo makes, uses, offers for sale, and sells to its customers the Dormeo mattresses, which are especially made or adapted by Dormeo to be or include a component, material, or apparatus of the claims of the '698 Patent and are not staple articles or commodities of commerce capable of substantial non-infringing use. As discussed above in describing Dormeo's direct infringement, the components of the infringing Dormeo mattresses individually and together constitute a material part of the invention claimed in at least claim 1 of the '698 Patent. Furthermore, on information and belief, Dormeo has known that one or more of the components of the Dormeo mattresses were made or adapted for use in these particular infringing products. Additionally, Dormeo has had knowledge of the '698 Patent and has known or been willfully blind to the foregoing third-party direct infringement since at least the filing of this complaint and the contentions recited herein.

27. As a result of Dormeo's infringement of the '698 Patent, Level Sleep has suffered and will continue to suffer monetary damages, including lost profits and a reasonable royalty, that are compensable under 35 U.S.C. § 284 in an amount to be determined at trial.

28. Unless an injunction is issued enjoining Dormeo, and anyone acting on its behalf, from infringing the '698 Patent, Level Sleep will continue to be irreparably harmed. Further, the balance of hardships between Level Sleep and Dormeo, as well as the public interest, warrants such an injunction.

SECOND CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 7,036,172)

29. Level Sleep incorporates the preceding paragraphs as though fully stated here.

30. Level Sleep is the owner of all rights, title, and interest in the '172 Patent, which is entitled "Bed Having Low Body Pressure and Alignment" and issued on May 2, 2006. A true and correct copy of the '172 Patent is attached as Exhibit B.

31. The '172 Patent is directed to a mattress with multiple layers and zones to support the reclining body in alignment and with lower pressure. For example, claim 1 reads as follows:

1. A mattress, extending in a lateral direction from side to side and extending in a longitudinal direction from a mattress head to a mattress foot, for supporting a reclining body, said mattress including a head part, a shoulder part, a waist part, a hip part and a leg part, said reclining body having a displacement profile, said mattress comprising,

a core extending in said longitudinal direction and in said lateral direction, said core for undergoing differing vertical displacements when supporting the reclining body,


said core having displacement parameters varying to match the displacement profile of the reclining body whereby the reclining body is supported by low body pressure,

said core having a plurality of regions where the vertical displacement in one or more of the regions varies to match the displacement profile of the reclining body to maintain the reclining body in alignment,

said core including one or more foam members having structural modification where the one or more foam members at different longitudinal positions exhibit different displacement parameters including different ILDs to support the reclining body with low body pressure and exhibits different vertical displacements to maintain the reclining body in alignment.

32. On information and belief, Dormeo infringes at least claim 1 of the '172 Patent by making, using, offering for sale, and selling in the United States and/or importing into the United States infringing products including at least its Octaspring mattresses.

33. Dormeo sells a number of different beds that infringe the '172 Patent. For instance, Dormeo markets its Octaspring mattresses claiming: "In each DORMEO Mattress, hundreds of Octasprings are assembled into seven zones of comfort -- softer for your head, more supportive for your hips and thighs. No pressure points, just equally distributed weight, adapting to each sleeper's body weight with customer support."



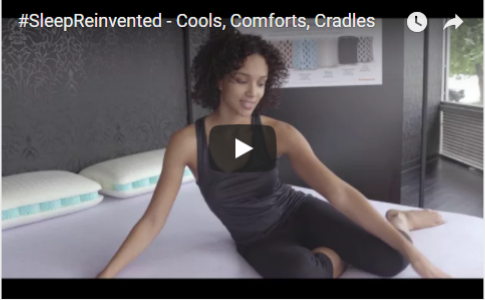
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[MATTRESS](#)
[PILLOWS](#)
[TECHNOLOGY](#)
[STORE LOCATOR](#)

But what, exactly, is an Octaspring? Call it a honeycomb of comfort.


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A cross between a spring coil and memory foam, Octasprings are the power behind DORMEO® Mattresses legendary comfort. Pressure-relieving and open to air flow, each Octaspring features eight reinforcements, a series of air vents and a hole in the center that lets humid air pass through. This design allows air to filter through and away from the mattress, dissipating heat and humidity. This creates a luxurious, dynamic sleep surface that's noticeably cooler.

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[TECHNOLOGY](#)
[WARRANTY INFO](#)









(www.dormeo.com/technology.html).

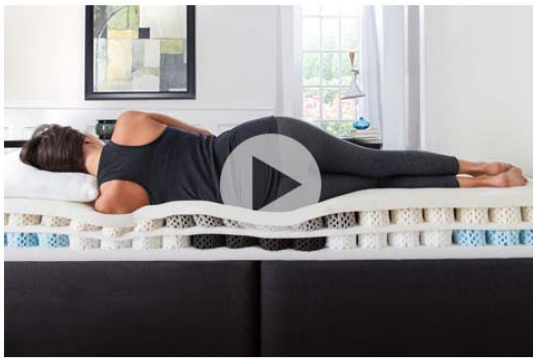
34. The following image from the Dormeo website shows the various layers and zones of the Dormeo mattress.



As illustrated and discussed further below, the Dormeo mattress extends in a lateral direction from side to side and extends in a longitudinal direction from a mattress head to a mattress foot,

for supporting a reclining body, said mattress including a head part, a shoulder part, a waist part, a hip part and a leg part, said reclining body having a displacement profile, as recited in claim 1. As shown above, the Dormeo mattress includes a core (including the Octasprings) extending in said longitudinal direction and in said lateral direction, as recited in claim 1.

35. The core in the Dormeo mattress undergoes differing vertical displacements when supporting the reclining body, as recited in claim 1. As Dormeo itself admits, its mattresses include “Octasprings positioned into zones, offering more support for your hips and thighs, softer for your head and shoulders, keeping your spine in complete alignment.”



BENEFITS

- Experience pressure relieving comfort **without the heat of memory foam** or the push-back of traditional springs.
- Octasprings positioned into zones, **offering more support** for your hips and thighs, softer for your head and shoulders, keeping your spine in complete alignment.
- Eliminates partner's disturbance.
- Breathable cover designed to **resist dust-mites and bacteria**.
- Mesh sides allow for **maximum air flow**.
- No flipping or turning necessary.

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(www.dormeo.com/mattress.html). Dormeo further claims to provide “a high level of pressure relieving comfort.” Thus, the mattress core has displacement parameters varying to match the displacement profile of the reclining body whereby the reclining body is supported by low body pressure and maintained in alignment, as recited in claim 1.

36. In addition, the Dormeo mattress core includes foam members having structural modification so that at different longitudinal positions the foam member exhibits different displacement parameters including, on information and belief, different ILDs (i.e., Indentation Load Deflection) to support the reclining body with low body pressure and exhibiting different vertical displacements to maintain the reclining body in alignment, as recited in claim 1.

Dormeo describes the foam members (i.e., Octasprings) as follows: “A cross between a spring coil and memory foam, Octasprings are the power behind DORMEO® Mattresses legendary comfort. Pressure-relieving and open to air flow, each Octaspring features eight reinforcements, a series of air vents and a hole in the center that lets humid air pass through.”

(www.dormeo.com/technology.html).

37. Through its actions, as described above, Dormeo has directly infringed and continues to infringe at least claim 1 of the '172 Patent, either literally or through the doctrine of equivalents, under 35 U.S.C. § 271(a).

38. In addition, Dormeo is indirectly responsible for the past and continuing direct infringement of at least claim 1 of the '172 Patent by certain third parties, including its customers and others, who have purchased and assembled Dormeo mattresses. When Dormeo's infringing mattresses are made, used, offered for sale, or sold by its customers and others, such action constitutes direct infringement of at least claim 1 of the '172 Patent. Furthermore, Dormeo has had knowledge of the '172 Patent since, at latest, the date this complaint was filed. Thus, Dormeo knows and has known (or has been willfully blind to the fact) that its customers and other third parties directly infringe claims of the '172 Patent through their making, using, offering for sale, or selling within the United States the infringing Dormeo mattresses.

39. On information and belief, Dormeo has specifically intended to induce, and has induced, its customers and others to directly infringe at least claim 1 of the '172 Patent through its instructions to its customers and others in the use and assembly of its beds. On information and belief, Dormeo provides instructional and other explanatory materials to its customers and others that describe the proper assembly and use of its beds. Further, on information and belief, Dormeo actively encouraged and continues to actively encourage its customers and others to

directly infringe the '172 Patent by making, using, testing, offering for sale, and selling the infringing Dormeo mattresses. Thus, Dormeo has induced, and continues to induce, infringement of at least claim 1 of the '172 Patent under 35 U.S.C. § 271(b).

40. Additionally, Dormeo has contributorily infringed and continues to contributorily infringe under 35 U.S.C. § 271(c) at least claim 1 of the '172 Patent. As explained above, certain third parties including Dormeo's customers have been infringing and continue to directly infringe at least claim 1 of the '172 Patent. Dormeo makes, uses, offers for sale, and sells to its customers the Dormeo mattresses, which are especially made or adapted by Dormeo to be or include a component, material, or apparatus of the claims of the '172 Patent and are not staple articles or commodities of commerce capable of substantial non-infringing use. As discussed above in describing Dormeo's direct infringement, the components of the infringing Dormeo mattresses individually and together constitute a material part of the invention claimed in at least claim 1 of the '172 Patent. Furthermore, on information and belief, Dormeo has known that one or more of the components of the Dormeo mattresses were made or adapted for use in these particular infringing products. Additionally, Dormeo has had knowledge of the '172 Patent and has known or been willfully blind to the foregoing third-party direct infringement since at least the filing of this complaint and the contentions recited herein.

41. As a result of Dormeo's infringement of the '172 Patent, Level Sleep has suffered and will continue to suffer monetary damages, including lost profits and a reasonable royalty, that are compensable under 35 U.S.C. § 284 in an amount to be determined at trial.

42. Unless an injunction is issued enjoining Dormeo, and anyone acting on its behalf, from infringing the '172 Patent, Level Sleep will continue to be irreparably harmed. Further, the

balance of hardships between Level Sleep and Dormeo, as well as the public interest, warrants such an injunction.

PRAYER FOR RELIEF

WHEREFORE, Level Sleep respectfully requests that the Court enter judgment in its favor and against Dormeo on this complaint as follows:

- A. A judgment that Dormeo has directly infringed, induced others to infringe, and contributed to the infringement of the Level Sleep Patents;
- B. A judgment requiring Dormeo to pay to Level Sleep damages resulting from the infringement of the Level Sleep Patents along with costs, expenses, pre-judgment interest, and post-judgment interest;
- C. A judgment holding that this is an exceptional case and awarding Level Sleep its attorney fees and costs pursuant to 35 U.S.C. § 285;
- D. A judgment imposing permanent injunctive relief prohibiting Dormeo, and all those acting in privity or acting in concert with it, from infringing, inducing, or contributing to the infringement of the Level Sleep Patents;
- E. An accounting and supplemental damages for all damages occurring after the period for which damages discovery is taken, and after discovery closes, through the Court's decision regarding the imposition of a permanent injunction;
- F. An order directing Dormeo to deliver to Level Sleep, for destruction at Level Sleep's option, all infringing products; and
- G. Any other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Level Sleep hereby demands a trial by jury on all issues so triable.

Dates: March 27, 2018

Respectfully submitted,

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